



December 7, 2001

Ms. Ruth H. Soucy  
Deputy General Counsel  
Open Government Section  
Comptroller of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

OR2001-5733

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155849.

The Comptroller of Public Accounts (the "comptroller") received a written request for various categories of information pertaining to a particular tax payer. You state that the comptroller has released some information in response to the request. You have, however, withheld other information that this office has previously determined to be confidential under sections 111.006 and 151.027 of the Tax Code. Assuming the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met, the comptroller must withhold that information in accordance with Open Records Ruling Nos. OR2000-0935 (2000) and OR99-3478 (1999).<sup>1</sup> Accordingly, we need not further address that particular information. *See* Open Records Decision No. 673 (2001).

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<sup>1</sup>The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

You contend, however, that other responsive information, a representative sample of which you submitted to this office, is excepted from disclosure under section 552.101 of the Government Code in conjunction with sections 111.006 and 151.027 of the Tax Code.<sup>2</sup> We have also received arguments from the requestor as to why the requested information should be released. *See* Gov't Code § 552.304.

We note at the outset that you did not submit to our office copies of the requested records in a timely manner. Section 552.301 of the Government Code dictates the procedure that a governmental body must follow when it seeks a decision from the attorney general as to whether requested information falls within an exception to disclosure. Among other requirements, the governmental body must submit to this office within fifteen business days of receipt of an information request "a copy of the specific information requested, or . . . representative samples of the information if a voluminous amount of information was requested." Gov't Code § 552.301(e)(1)(D). Otherwise, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302.

On the other hand, a demonstration that information is made confidential by laws outside the Public Information Act constitutes a compelling reason for non-disclosure. *See* Open Records Decision No. 150 (1977). You contend that the submitted records, or portions thereof, are made confidential under section 111.006 of the Tax Code and therefore must be withheld from the public pursuant to section 552.101 of the Government Code.<sup>3</sup> Section 111.006 of the Tax Code provides in part as follows:

(a) The following matter is confidential and may not be used publicly, opened to public inspection, or disclosed except as permitted under Subsection (b) of this section:

(1) [federal tax return information; and ]

(2) all information secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of the taxpayer's books, records, papers, officers, or employees, including

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<sup>2</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>3</sup>Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

an examination of the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer.<sup>4</sup>

*See also* Tax Code § 151.027(b) (making confidential identical information). The records at issue contain “information secured, derived, or obtained by the comptroller . . . during the course of an examination of the taxpayer’s books” that is made confidential by section 111.006(a) of the Tax Code. We agree that the information you have identified as being provided to the comptroller by the taxpayer during an audit of the taxpayer’s records must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 111.006(a)(2) of the Tax Code, except where indicated. We have also marked additional information that the comptroller must withhold pursuant to section 111.006. Furthermore, we also agree that the comptroller must de-identify certain records. The remaining information contained in these documents must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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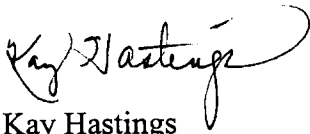
<sup>4</sup>Subsection (b) of section 111.006 regarding the subpoena of confidential information in certain judicial or administrative proceedings is not applicable here.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KH/RWP/sdk

Ref: ID# 155849

Enc: Submitted documents

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(w/o enclosures)